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THE COMMONWEALTH OF MASSACHUSETTS

LABOR RELATIONS COMMISSION

# ANNUAL REPORT

## FISCAL YEAR 1996

WILLIAM F. WELD  
Governor

ARGEO PAUL CELLUCCI  
Lieutenant Governor

ROBERT C. DUMONT  
Chairman

WILLIAM J. DALTON  
Commissioner

CLAUDIA T. CENTOMINI  
Commissioner

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# COMMONWEALTH OF MASSACHUSETTS

## LABOR RELATIONS COMMISSION

### FISCAL YEAR 1996 ANNUAL REPORT

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## MESSAGE FROM THE COMMISSION

His Excellency The Governor William F. Weld  
The Honorable Lieutenant Governor Paul Cellucci  
The Great and General Court  
Citizens of the Commonwealth

In accordance with the Massachusetts General Laws, Chapter 23, s.90 (c), we are pleased to present to you the Annual Report for the Massachusetts Labor Relations Commission for Fiscal Year 1996.

Fiscal Year 1996 was a year of continued progress for the work of the Commission as well as relative peace on the public sector labor- management front.

Some highlights:

- For the third consecutive year the number of cases closed by the Commission exceeded the number of charges filed
- The number of formal decisions and Administrative Law Judge appeals resolved by the Commission doubled
- No strikes occurred during this year
- The elapsed time from the filing of a charge to the closing of a case has declined from FY95 levels
- 58 elections were conducted involving 10,711 eligible employees
- The Commission's commitment to professional competence and diversity was strengthened through the hiring of five new professional and managerial employees
- There has been an increased emphasis on settling cases before they go to trial (see voluntary settlement)
- There has been a comprehensive review of ways in which upgraded technology could improve our performance
- Springfield office opened to serve the western part of the Commonwealth

- The Commission updated A Guide to the Massachusetts Public Employees Collective Bargaining Law (a joint publication of the Massachusetts Labor Relations Commission and the Maurice A. Donahue Institute for Government Services). It was last updated in 1993.
- Under the auspices of the Commission, Commissioner Dalton has written a book entitled A Practical Guide to Public Section Labor Relations (to be published by the Donahue Institute in January 1997) to provide public sector management and labor with a better understanding of the Commonwealth's collective bargaining laws.

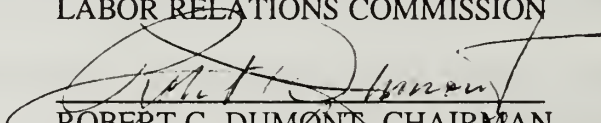
Our primary goal has been to provide prompt and fair resolution of unfair labor practices and representative cases filed at the Commission. Each charge is investigated and a probable cause determination is made, resulting in either a complaint being issued or the charge being dismissed. There were 671 charges filed in FY96, as usual a substantial number of these cases were dismissed at the probable cause stage. The remainder were assigned to an agent of the Commission to be heard. Prior to hearing, a significant number of these cases settled. We consider this area of settlement to be a key one in achieving our goal of prompt and fair resolution and have singled it out for special comment elsewhere in this report.

Maintaining and enhancing the lines of communication with the parties that appear before us is an important way to ensure the quality of our effort. To that end, we have continued to have periodic meetings with a representative group from the labor and employment section of the bar association. We have found their feedback to be helpful.

There are currently 817 agency service fees cases awaiting resolution which we are not counting in our general case load. Four years ago, the Commission selected a group of agency service fee cases and consolidated them for hearing in order to facilitate issuing a benchmark decision for agency service fee cases. The Commission expects to issue that decision in FY97.

We hope this report and our continuing efforts to work together with all the parties who use our services, and contributes to our goal of maintaining a peaceful and productive labor/management relations environment.

LABOR RELATIONS COMMISSION

  
ROBERT C. DUMONT, CHAIRMAN

  
WILLIAM J. DALTON, COMMISSIONER

  
CLAUDIA T. CENTOMINI, COMMISSIONER



## STRUCTURE OF THE COMMISSION

The *Commission* consists of three members who are appointed by the Governor for staggered five-year terms, one designated as chairperson. Any member of the Commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law. The Commissioners manage the Commission, hear and decide cases pending before the agency, authorize all litigation, and manage all personnel. For administrative purposes, the Commission is within, but not subject to the jurisdiction of, the Department of Labor and Workforce Development.

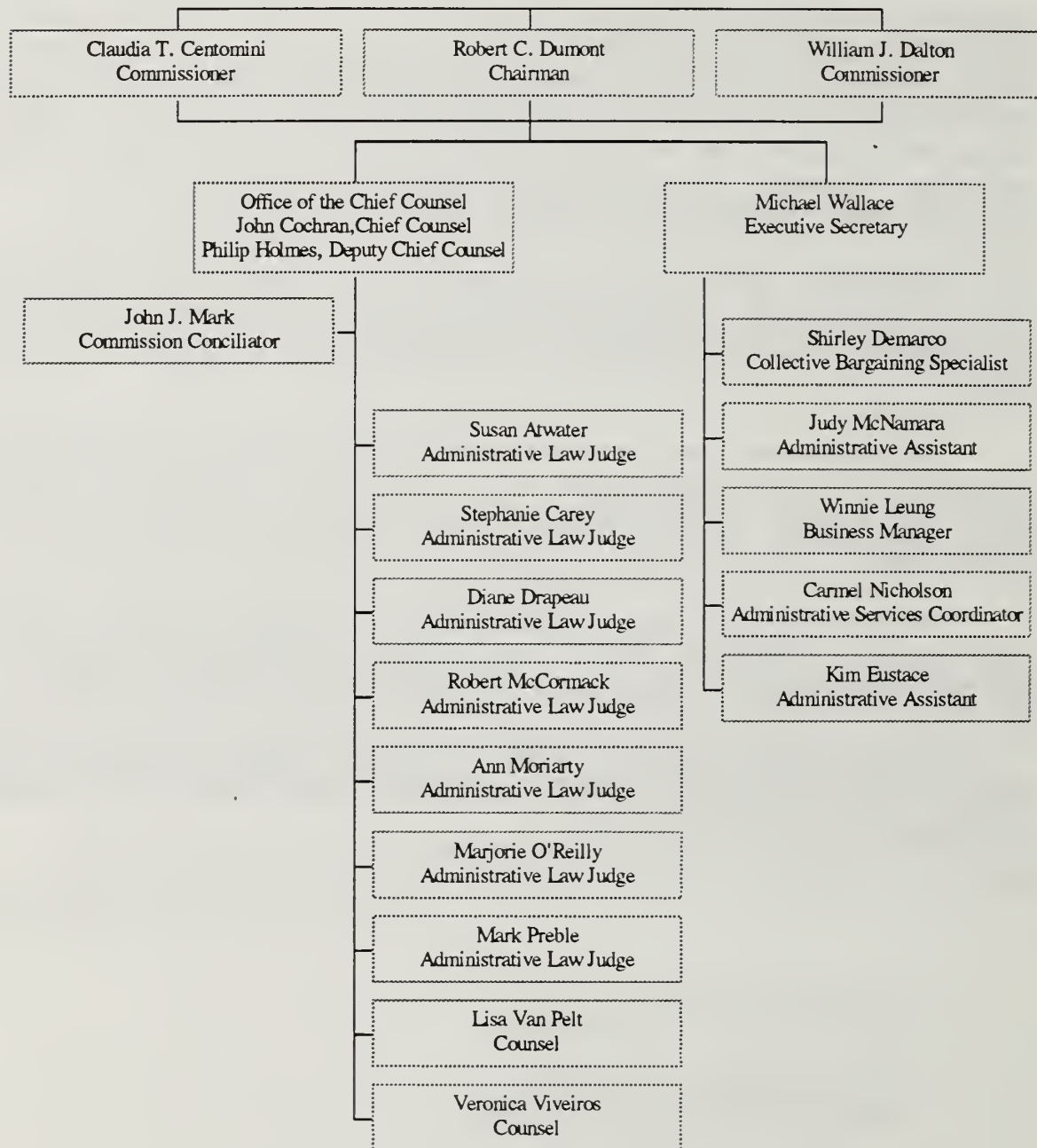
The *Executive Secretary* directs and supervises certain employees of the Commission. He assists the Commissioners in budgetary and other administrative matters, informs the Commission of the status of all matters pending before it, and maintains a permanent record of the disposition of cases.

The *Chief Counsel* directs and supervises the legal staff in their duties of investigating cases, conducting hearings, and writing decisions. He also serves as the Commissioners' principal legal advisor and supervises the legal staff with respect to all litigation before the courts of the Commonwealth.

The administrative law judges, designated by the Commission as its agents, investigate and hear cases, and write decisions. Attorneys may also appear and represent the Commission in any court proceeding. Election specialists conduct on-site and mail ballot representation elections.

The administrative support staff docket all cases, type notices, decisions and court briefs, tabulate statistics, and process all internal and external records handled by the Commission, including personnel and purchasing records.

# LABOR RELATIONS COMMISSION ORGANIZATIONAL CHART





## STATEMENT OF THE COMMISSION'S RESPONSIBILITIES

The Labor Relations Commission is a quasi-judicial agency and ensures the prompt, peaceful, and fair resolution of labor disputes by enforcing the labor relations laws of the Commonwealth. As the state counterpart to the National Labor Relations Board, the Commission administers the Public Employee Bargaining Law and the Private Sector Collective Bargaining Law, Massachusetts General Laws Chapter 150E and Chapter 150A respectively. These laws give employees of state and local government, and employees of private businesses who do not come within the jurisdiction of the NLRB the right and protection:

- to form, join, or participate in a union or association;
- to bargain collectively over terms and conditions of employment such as wages, hours and benefits;
- to engage in other concerted activity for mutual aid and protection; and
- to refrain from participating in any of these activities.

The Commission has existed since 1937, and its jurisdiction has been expanded frequently. The legislature has granted full collective bargaining rights to state, county and municipal employees in the executive and judicial branches of government. Approximately 98% of the Commission's caseload involves labor matters affecting public employees and 2% of the caseload involves the employees of private employers. By guaranteeing to employees the right to choose freely whether or not to be represented by a union and by impartially adjudicating claims between employees, employers and unions, the Commission ensures that labor and management live within the structures of the Commonwealth's collective bargaining laws. Through its decisions, the Commission establishes labor relations policy for public employees throughout Massachusetts.

Pursuant to its responsibility to ensure prompt and fair resolution of labor disputes, the Commission performs the following primary functions:

### 1. Disposition of Unfair Labor Practice Charges

The Commission adjudicates charges of unfair labor practices as defined by the M.G.L. c. 150E and c.150A. For example, charges may be filed by either a union or an employer alleging that the opposing party has not bargained in good faith. A charge may be filed by an employee against an employer claiming that the employer has discriminated against the employee because of union activity. Charges may also stem from allegations by individuals that their union has not represented them fairly.

Whenever an employee, union, or employer files a charge with the Commission claiming that either an employer or union has committed an unfair labor practice, the Commission investigates the charge and after reviewing the facts alleged and legal arguments of the parties, determines whether it has "probable cause" to issue a complaint and conduct a hearing. If the charge is dismissed without a hearing, the charging party may request reconsideration of the matter by the Commission. If the Commission affirms the dismissal, the charging party may seek judicial review in the Appeals Court.

If the Commission determines that probable cause exists to believe that the law has been violated, a complaint is issued and a public hearing is conducted by an administrative law judge or other Commission agents. At the hearing, the parties may be represented by counsel, witnesses are sworn and evidence is taken. Following the hearing, each side has the opportunity either to file briefs or to offer closing arguments.

The administrative law judge may issue either a decision or recommended findings of fact. Either may be reviewed by the full Commission. Final Commission decisions may be appealed to the Massachusetts Appeals Court.

All administrative law judge and final Commission decisions are written and periodically published for the benefit of the public and the labor community in the Massachusetts Labor Cases, a private reporter service. The Commission's decisions are also available by CD ROM subscription through the Social Law Library. Excerpts of the decisions are also published in Mass. Lawyer's Weekly, National Public Employment Reporter, Government Employee Relations Report, Labor Relations Reporter, and Public Employee Bargaining. The Commission's decisions affect the collective bargaining process and the relationship between labor and management throughout the Commonwealth.

## **2. Conduct of Representation Elections and Bargaining Unit Determination**

The Commission conducts secret ballot elections for employees to determine whether they wish to be represented by a union. Elections are conducted whenever (1) one or more employee organizations claim to represent a substantial number of employees in an appropriate unit; (2) an employee organization petitions the Commission alleging that a substantial number of employees wish to be represented by the petitioner; or (3) a substantial number of employees in a bargaining unit allege that the exclusive representative no longer represents a majority of the employees. Elections may be conducted "on site" or by mail ballot procedures depending on the size of the unit and the relative cost of each type of election.

By law, the Commission must determine what bargaining unit is "appropriate" for collective bargaining. The agency must consider the "community of interest" that exists between different classifications of employees, the efficiency of the employer's operations, and the interests of employees in "effective" representation. The Commission assists the parties to reach agreement concerning an appropriate unit. When no agreement is possible, however, the Commission holds a hearing and issues a written decision.

### 3. Prevention and Termination of Strikes

Strikes by the employees of public employers are illegal under Massachusetts General Laws Chapter 150E. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the Commission for an investigation. The Commission quickly investigates and decides whether an unlawful strike has occurred or is about to occur. If unlawful strike activity is found, the Commission directs striking employees back to work and issues other orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the Commission's order, but judicial enforcement of the order sometimes necessitates Superior Court litigation which can result in court-imposed sanctions against strikers.

### 4. Agency Service Fee Determinations

Chapter 150E allows public employers to enter into collective bargaining agreements which require non-union employees covered by the agreement to pay an agency service fee to the union, "commensurate with the cost of collective bargaining and contract administration," as a condition of continued employment. Employees may challenge the amount of the annual agency service fee by filing an "amount" charge with the Commission. Such charges require a detailed evaluation of the union's expenses. Employees also may challenge a union's legal right to collect a fee by filing a validity charge with the Commission. Hundreds of charges are filed each year raising questions of constitutional rights, auditing and accounting practices as well as some labor policy issues. The Commission's rulings have set precedent in this emerging area of the law.

### 5. Court Litigation

Parties to final decisions issued by the Commission may appeal the decision to the Massachusetts Appeals Court. For this reason, the Commission functions as a trial level court for labor relations cases. Further appellate review may be sought before the Massachusetts Supreme Judicial Court. In addition, the Commission may bring suit in the Appeals Court to enforce compliance with final decisions of the Agency. Although the Appeals Court has original jurisdiction over Commission final orders, the Supreme Judicial Court often takes cases directly on appeal either at the request of a party or by its own motion. The Commission also occasionally must seek judicial enforcement in Superior Court of orders directing public employees to cease engaging in illegal strike activities. Commission staff attorneys represent the Commission and conduct all of the agency's litigation.



## 6. Other Responsibilities

The Commission processes unit clarification petitions and requests for binding arbitration. Clarification petitions may be filed by an employee organization or an employer for the purpose of clarifying or amending a recognized or certified bargaining unit.

Massachusetts law specifies that a party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration, may petition the Commission to order grievance arbitration. These "Requests For Binding Arbitration" are processed quickly by the Commission to assist the parties to resolve their grievances.

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations and the bargaining units they represent. Section 7 of Chapter 150E requires public employers to file copies of all collective bargaining agreements with the Commission. The Commission requires labor organizations to provide the following information: the name and address of current officers, address where notices can be sent, date of organization, date of certification, and expiration date of signed agreements. Each organization must also file an annual report with the Commission containing: the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid officers. The Commission relies upon various internal case-processing incentives to encourage compliance with the filing requirements.

## 7. Agency Priorities

The Commission's highest priority is to enforce the state's collective bargaining laws and to promote productive labor relations by resolving cases filed with the Commission as quickly as possible. Time required to resolve a case varies depending upon the nature of the legal claims, the resources of the parties and the resources of the Commission. Each charge requires docketing and clerical time; investigation and deliberation time; preparation of a complaint or dismissal order; and, when the charges are deemed sufficiently meritorious, a hearing with detailed factual findings and a legal decision, followed by time for appeals. Constitutional principles of due process dictate each step in the procedure. The Commission, however, has implemented techniques designed to reduce the agency personnel time required to perform each step. For example, on July 1, 1993, the Commission instituted a mandatory written procedure policy for unfair labor practice cases. This policy, which requires the parties to submit detailed documentation to the Commission, replaces time consuming, in-person investigation procedures has resulted in a faster processing of cases. During FY 1994 and FY 1995, the Commission implemented additional internal procedures intended to emphasize case settlement as a means to improve productivity by resolving cases without time consuming trials. Beginning July 1, 1994, the Commission instituted a case evaluation program designed to give the parties to selected unfair labor practice cases an opportunity for early evaluation of their cases in the hope that if the parties receive an impartial appraisal of their legal position then they will be more likely to settle the matter.

The changes instituted at the Commission have resulted in substantial improvement in the time it takes for the Commission to determine "probable cause" and hold hearings on cases. Formerly, it took six to eight months for a case to reach the Commissioners for a probable cause determination; it now takes less than three months from the time pleadings are filed. Formerly, the time span between the time a complaint was issued by the Commission to the time of hearing was six to eight months; it is now less than four months.

While the Commission has focused its attention to prompt processing of cases, it has in no way compromised its commitment to quality. By delivering clear legal opinions that provide guidance to the labor-management community, the Commission attempts not only to resolve the specific legal controversy that is the subject of the decision, but also to establish clear legal precedent that will guide other parties in the conduct of their labor relations.



## EVOLUTION OF PUBLIC EMPLOYEE BARGAINING

- 1935** Wagner Act (National Labor Relations Act) gave collective bargaining rights to private sector employees in interstate commerce.
- 1937** Massachusetts passes Chapter 150A extending bargaining rights to private sector employees within the Commonwealth; Labor Relations Commission established.
- 1958** All public employees (except police officers) granted the right to join unions and to "present proposals" to public employers. Chapter 149, Section 178D.
- 1960** Employees of city or town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the manner and method of bargaining. Chapter 40, Section 4C.
- 1962** The Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority, and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority became subject to the representation and unfair labor practice provisions of Chapter 150A.
- 1964** State employees given the right to bargain with respect to working conditions (but not wages). Chapter 419, Section 178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective bargaining negotiations that bargaining took place.
- 1964** Chapter 150A amended to include health care facilities as "employers" and nurses as "employees."
- 1965** Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment Chapter 419, Sections 178G-N. This repealed Chapter 40, S.4C.
- 1968** Chapter 150A amended to expressly include private nonprofit institutions as "employers" and nonprofessional employees of a health care facility or of private nonprofit institutions (except members of religious orders) as "employees."
- 1969** Medonca Commission established by legislature to revise public employee bargaining laws.
- 1973** Most public employees - state and municipal - extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.

- 1974** Chapter 150E amended to strengthen enforcement powers of Labor Relations Commission, modify union unfair labor practices, modify standards for exclusion of managerial employees.
- 1975** LRC issued standards for appropriate bargaining units affecting fifty-five thousand state employees in more than two thousand job classifications. Ten statewide units were created--five non-professional and five professional. Statute passed providing for separate bargaining unit for state police. [Employees of the University of Massachusetts, and the state and community colleges also have separate units.]
- 1977** Chapter 150E extended to court employees in the judicial branch; two state-wide units (excepting Middlesex and Suffolk Counties' Superior Court court officers) established for judicial branch employees.
- 1977** Housing authorities and their employees covered by the representation and prohibited practice sections of Chapter 150E. [Most other Authorities remain subject, to varying degrees, to Chapter 150A.]
- 1977** Joint Labor-Management Commission established to oversee collective bargaining negotiations and impasses involving municipal police officers or fire fighters.
- 1977** Agency service fee provisions are clarified to require that employee organizations provide a rebate procedure and to indicate which expenditures may be rebated to employees.
- 1980** "Proposition 2 1/2" enacted, repealing final and binding arbitration for police and firefighter contract negotiations.
- 1981** Chapter 150E amended to make decisions of the Labor Relations Commission reviewable in the Appeals Court.
- 1981** Labor Relations Commission empowered to refer to bargain cases to the Board of Conciliation and Arbitration of the Joint-Labor Management Committee for mediation.
- 1981** Section 11 of Chapter 150E amended to articulate the standard for issuing complaints in prohibited practice cases.
- 1981** The definition of "employer" or "public employer" in Section 1 of Chapter 150E was amended to specifically include all political subdivisions, with limited exceptions. In addition, the definition of "professional employee" in Section 1 of Chapter 150E was amended to specifically include a detective, member of a

detective bureau or police officer who is primarily engaged in investigative work in any city or town police department with more than 400 employees.

- 1982** LRC issues comprehensive regulations setting forth agency service fee procedures, including requirements for unions to collect a fee pursuant to Section 12 of Chapter 150E and for employees to challenge the amount of validity of the fee.
- 1983** Chapter 150A amended to specifically cover private vendors who contract with the state or its political subdivisions to provide certain social and other services.
- 1984** The definition of "employer" or "public employer" in Section 1 of Chapter 150E was amended to include the newly created Massachusetts Water Resources Authority.
- 1986** Chapter 150E amended to forbid employers from unilaterally changing employees' wages, hours and working conditions until the collective bargaining process (including mediation, fact-finding or arbitration, if applicable) has been completed.
- 1987** Arbitration reinstituted for police and firefighter contract negotiations, with arbitration awards subject to funding by the legislative body.
- 1990** LRC revises regulations to clarify procedures and increase efficiency.
- 1993** The Education Reform Act of 1993 (St. 1993, c.71) impacts public employees by making major changes pertaining to the demotion and dismissal of teachers and principles.
- 1996** For cases in which the Commission issues a Complaint of Prohibited Practice and orders a hearing, Section 577 of Chapter 151 of the Acts of 1996 allows the parties to elect to submit the case to arbitration at any time up to thirty days prior to the commencement of the hearing ordered by the Commission.



## FILING A COMPLAINT

### A. Initial Filing

The charging party must submit its written evidence and arguments to the Executive Secretary of the Commission either at the time of filing a charge or within twenty (20) calendar days from the date of the Commission's Notice that a charge has been docketed.

### B. Submission Requirements (including time deadlines):

#### (1) **Information Required of Charging Party**

The charging party must file the following information with the Executive Secretary, with a copy to each other party, either when the charge is filed or within twenty (20) calendar days of the date of the Commission's Notice that a charge has been docketed. The submission should be clearly labeled "Charging Party's Written Submission," and must contain:

(a) Numbered Allegations: A clear and concise statement of the relevant facts constituting the prohibited labor practice, including the name(s) of the individuals involved in the prohibited labor practice, the times and places of the particular act(s) giving rise to the dispute, and the specific provisions of either G.L. c.150E or G.L. c.150A alleged to have been violated. The charging party's claims must be in the form of numbered allegations. The written submission must be signed and the signer must affirm that the information in the written submission is true to the best of the signer's "information and belief."

(b) Affidavits and Documents: Charging Party is encouraged to provide sworn affidavits from witnesses with personal knowledge of the facts alleged in the written submission. If affidavits are supplied to establish the facts of the charge they should be based upon the affiant's personal knowledge. Evidence from people who lack personal knowledge of the facts to which they attest is less persuasive than sworn evidence from people with personal knowledge of the facts to which they swear; and may not be sufficient to establish "probable cause" to believe that the alleged facts demonstrate conduct which violates the Law. The charging party may either quote from or include documentary evidence, such as: collective bargaining agreement, letters, notices, pay records, etc, that are necessary to support the charge. The charging party's submission must be sufficient to establish probable cause to believe that either G.L. c.150E or c.150A has been violated.

(c) Relief Sought: A statement of the full relief sought by the charging party, if different from that specified in the charge filed with the Commission.

(d) Settlement Proposals: The charging party should state whether settlement has been proposed; and, if settlement has not been proposed, should explain why. The Commission may

schedule a settlement conference at any time at the request of the Charging Party if the Commission concludes that a settlement conference would be helpful to resolution of the case.

(e) Grievance Information: Information about any grievance(s) related to conduct alleged to violate the law, the status of any grievance(s), a single copy of the contract upon which the grievance is based, a copy of the grievance, and an explanation as to why the Commission should or should not defer to the grievance or arbitral process.

(f) Mediation Information: Information about any mediation involving the parties to the charge pending at the Board of Conciliation and Arbitration or the Joint Labor Management Committee, the status of the mediation, and the charging party's position on the issue of referral to mediation.

(g) Other Information: Please include any additional information concerning relief sought, settlement efforts or other information relevant to the Commission's processing of this case.

## **(2) The Respondent's Response**

Any response which the respondent wishes to make must be written and must be filed with the Executive Secretary with a copy of each other party within twenty (20) calendar days after having received a copy of the charging party's written submission. The Responses should be labeled "Respondent's Response" and include the Commission's case number.

(a) Affidavits and Documents: If the respondent does not dispute the facts alleged by the charging party no affidavits need be filed, and the respondent should note that the facts are not disputed. If, however, the respondent wishes to contradict facts alleged by the charging party, the respondent is encouraged to supply sworn affidavits containing the contradicting facts. Affidavits should be written by people who have personal knowledge of the stated facts. Where appropriate, documentary evidence supporting the respondent's position should also be included or quoted. Evidence from people who lack personal knowledge of the facts to which they attest is less persuasive than sworn evidence from people with personal knowledge of the facts to which they swear; and may not be sufficient to rebut sworn evidence submitted by the Charging Party. Thus, if the respondent chooses not to supply sworn affidavits, but instead to rely upon information attested to by a party lacking personal knowledge of the facts, the respondent's evidence will be accorded less weight than sworn affidavits submitted by the Charging Party from witnesses with personal knowledge of the facts.

(b) Affirmative Defenses: The respondent should separately identify any affirmative defenses upon which it relies, and support its assertions with sworn statements of facts (which can be sworn as true based upon the signers "information and belief") and documentary evidence where applicable.



(c) Deferral or Referral: If deferral to arbitration is sought or the parties are involved in mediation the respondent must inform the Commission if it is willing to waive any contractual time defenses to arbitration, or other objections to mediation.

(d) Settlement Proposals: The respondent may suggest settlement proposals or explain why the matter has not yet been settled. The Commission may schedule a settlement conference at any time at the request of the Respondent if the Commission concludes that a settlement conference would be helpful to resolution of the case.

### **(3) Intervenor**

(a) Any employee, employer or employee organization that moves for intervention pursuant to 456 CMR 12.03 may also file a written statement in support of its position concerning the charge. The statement must be accompanied by sworn factual affidavits and all documentary evidence on which the intervenor relies. The intervenor must file all statements and supporting evidence with the Executive Secretary and provide a complete copy to all other parties to the case within twenty (20) days of receipt of a copy of the charging party's submission to the Commission or within ten (10) days of receipt of a copy of the respondent's submission.

(b) Parties to the case must state whether they oppose or do not oppose any motion to intervene either when they file their written submission or within ten (10) days of receipt of the motion, whichever is later. Motions to intervene usually are decided after receipt of all written submissions. Persons who have moved to intervene shall be treated as "parties" for the purpose of serving documents prior to the Commission's ruling on their motion to intervene.

### **(4) Charging Party's Reply**

The charging party will have ten (10) calendar days from receipt of the respondent's submission to file a written reply with the Executive Secretary and with all other parties to the case.

The written reply must fully explain any disagreement with the facts and statements made in the respondent's response. If the charging party disputes facts alleged by the respondent, the charging party must identify the disputed facts and must include relevant sworn affidavit and, where appropriate, documentary evidence to support the charging party's position.

### **(5) Unopposed Extensions of Time**

Parties may extend by mutual agreement any time for filing by giving the Commission written notice of the time extension to which they have agreed. All such extensions are limited to a combined total of three months per case, except for good cause when permitted by the Commission.

## **(6) Opposed Requests**

Any request for Commission permission to extend the time for filing which is opposed by another party to the case must be filed in writing with the Executive Secretary at least three days prior to the date when the submission is due and must contain the position of the other part(ies) concerning the request.

### **C. Commission Responses**

After review of all submissions by the parties the Commission will issue a probable cause determination. The Charging Party has the burden of presenting sufficient evidence to give the Commissioners “probable cause” to believe that the Respondent has violated the law. If the respondent chooses not to file a response, the Commission will make a probable cause determination based solely on the basis of the Charging Party’s written submission. If the Respondent provides evidence that facts alleged by the Charging Party are untrue, it is unlikely that the Commission will find that the Charging Party has met its burden of establishing probable cause unless the facts alleged by the Charging Party have been submitted in affidavit form. If the Respondent chooses to support its assertions with affidavit evidence, the Commission will evaluate the adequacy of the affidavit evidence from both parties to determine whether the Charging Party has established probable cause.

The Commission may contact the parties to encourage settlement and may schedule a settlement conference at any time pursuant to 456 CMR 12.10.

### **D. Exceptions to Written Investigation Procedure**

The Commission may grant a request to conduct an in-office investigation in lieu of the written investigation procedure only in extraordinary circumstances and for good cause.

### **E. General Filing Requirements**

When referenced in this Notice the term “day” shall mean calendar days, including Saturdays, Sundays and legal holidays (456 CMR 11.06). All times are calculated according to Commission rule 12.07(1) which specifies:

(1) In computing any period of time prescribed or allowed by these rules and regulations, the day of the act, event or default when the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday including Suffolk County legal holidays.

All filings with the Commission shall be made in accordance with Commission Rule 12.11 which specifies:

(1) All pleadings, written motions, briefs or memoranda filed by any party in connection with any matter pending before the Commission shall be on paper measuring eight and one half (8-1/2) inches in width and eleven (11) inches in length.

(2) All pleadings, written motions, briefs and memoranda shall be typewritten and double spaced.

(3) An original and four<sup>1</sup> copies of all pleadings, written motions, briefs or memoranda shall be filed with the Commission.

(4) All documents shall be deemed filed upon receipt by the Commission.

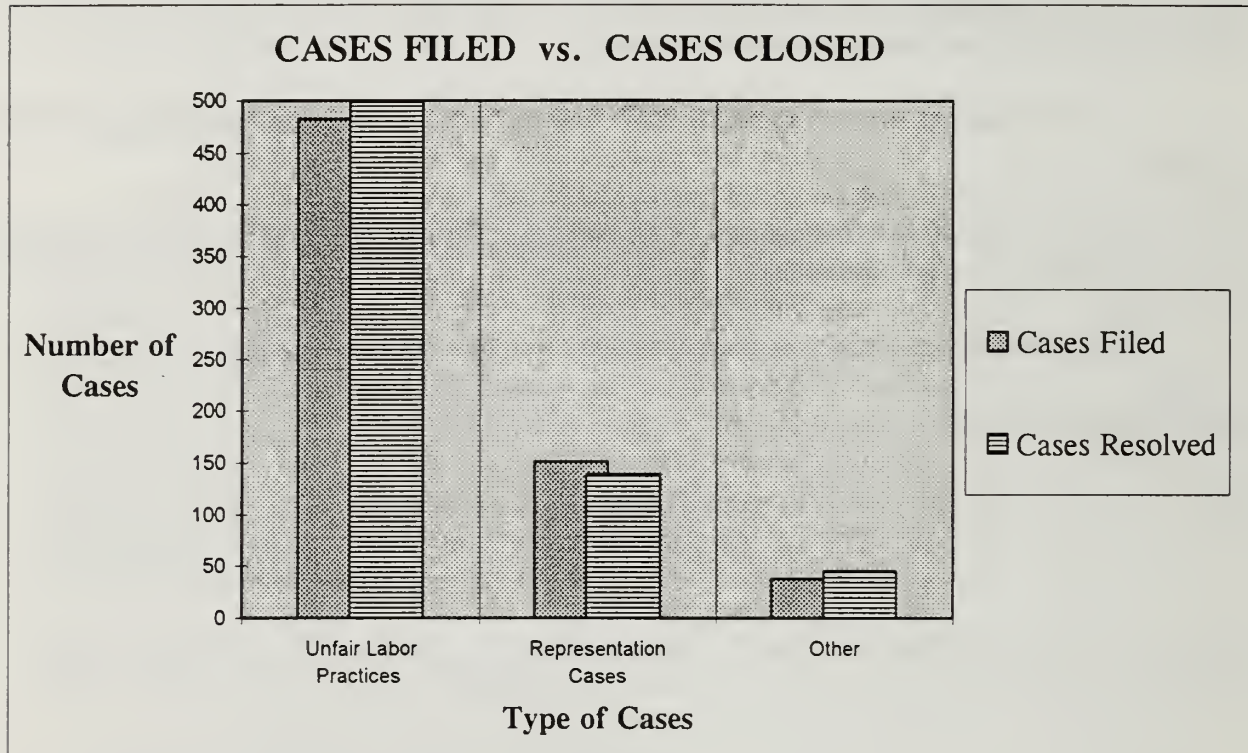
All filings must also contain a certificate of service. 456 CMR 12.02.

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<sup>1</sup> Although Rule 12.11 requires submission of an original and four copies of documents filed with the Commission, the Commission has decided to suspend application of the rule to written investigation materials for the convenience of the parties. Please submit one copy of any long document, such as a collective bargaining agreement, or evidence such as affidavits or documents. Please submit an original and two copies of all other documents containing legal argument, or factual narratives.



## CASELOAD ANALYSIS



With the close of fiscal year on June 30, 1996, the total number of new cases filed, 671, is a decrease over the Fiscal Year 1995 figure of 837. For the second year in a row, the Commission received a record decrease in new charges, a 20% decrease over Fiscal Year 1995.

As a result, the number of cases closed has also decreased. By June 30, 1996, 683 cases have been closed, a decrease over Fiscal 1995 figure of 844. Although the number of new cases closed is down by 161, for the third year in a row the number of new cases closed exceeded the number of filed in that year. The most significant statistic may be the average number of weeks to close a case for Fiscal 1996 over Fiscal 1995. By June 30, the average number of weeks to close a case is 45.26, a decrease of 11 weeks over Fiscal 1995 figure of 56.32

## **VOLUNTARY SETTLEMENT**

Although the Commission has always been optimistic that parties would resolve their disputes prior to hearing, beginning in 1993 the Commission implemented internal procedures in its efforts to have parties to resolve issues prior to trial.

Commission agents have been asked to work closely with the parties in order to amicably settle unfair labor practice charges and representation cases. Failing settlement, Commission agents are asked to have the parties stipulate to as many facts as possible prior to hearing in order to make the trial run more smoothly.

Several of the Commission staff members have received training in mediation techniques and they have worked with other staff members in order to improve their settlement skills. Additionally, as of the writing of this report, the Commission has hired a Commission Conciliator whose sole function is to work with the parties to settle cases prior to trial.

The Commission uses several methods to determine whether a case has a good probability to settle. Initially, when all the pleadings have been filed in a case, one Commissioner reviews the files to find those cases which have a high likelihood of settlement. Additionally, at the time the Commissioners make a determination to issue a Complaint, the case is evaluated for its probability of settlement. If that probability is sufficiently high, the case is referred to the Commission settlement group or the Commission Conciliator who contacts the parties in an attempt to resolve the issues. It should be noted that this does not slow the process for receiving a trial date. Only at the mutual request of the parties will that trial date be delayed for settlement discussions.

If the Commission has determined that a case does not have a sufficiently high probability of settlement to refer it to the settlement group or the Commission Conciliator, the parties may still request that the Commission assist the parties in resolving the issues.

Only since 1993 has the Commission begun to tally the number of cases in which it has been involved in the settlement. During the past fiscal year, approximately one hundred and fifty cases were resolved with the Commission's help.



## PUBLIC INFORMATION/COMMUNITY RELATIONS

The Commission understands that employees, unions and employers are better able to comply with the law when they understand their statutory rights and responsibilities. By providing information to the public and meeting with groups of employers and employees, the Commission attempts to reduce the numbers of charges filed. The Commission has authored A Guide to the Public Employee Collective Bargaining Law<sup>2</sup> (now in its 8th edition) which explains Commission procedures, summarizes decisions and includes the text of the law and the Commission's regulations. The Guide is published and sold by the University of Massachusetts Institute of Government Services and used extensively by the public.

A Commission staff member is assigned to "Officer of the Day" duty to aid the many people who call or walk into the Commission with labor-related problems. Although the Commission cannot always solve the problems, the "Officer of the Day" provides accurate information to assist the public. The Commission also answers questions from the press concerning the status of various cases before the Commission.

The Commission supplies information to three local professional publications to inform practitioners in the field of public sector labor relations. The Massachusetts Labor Relations Reporter publishes information concerning decisions, court cases, hearings, elections, complaints, and all other activities; Massachusetts Labor Cases prints all Commission decisions in full; and Massachusetts Lawyers Weekly prints summaries of Commission decisions. Commission decisions are also frequently reported in national publications, including Government Employee Relations Reporter, the Bureau of National Affairs Labor Relations Reference Manual, and the Commerce Clearing House Labor Cases.

Commission agents travel across the state in an effort to make the Commission's services more accessible. Most elections are conducted at the place of employment. The Commission also provides training to large groups of constituents in order to prevent prohibited practices.

In order to provide better services to the western part of the state, the Commission planned and received funding in its FY 1996 budget for an office and hearing room in Springfield. This facility has been open since November, 1995.

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<sup>2</sup> Updated during this year.

<b>LABOR RELATIONS COMMISSION FISCAL YEAR 1996 BUDGET</b>
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**Appropriation**

General Appropriation	\$ 1,001,890
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<b>Total Appropriation</b>	<b>\$ 1,001,890</b>
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**Expenditures + Reverted**

Expenditures

AA - Employee Compensation	\$ 845,464
BB - Travel/Training	4,533
CC - Legal Intern	2,020
DD - Pension and Insurance Related Expenses	11,503
EE - Administrative Expenses	44,072
FF - Facility Operational Expenses	0
GG - Space Rental	3,640
HH - Consultant Services	36,100
JJ - Operational Services	7,000
KK - Equipment Purchase	19,433
LL - Equipment Lease, Maintenance, and Repair	<u>19,058</u>
Subtotal	992,823

Reverted

Reverted (all subsidiaries)	<u>\$ 9,067</u>
Sub-Total Reverted	\$ 9,067

<b>Total Expenditures + Reverted</b>	<b>\$ 1,001,890</b>
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## DECISION HIGHLIGHTS <sup>3</sup>

In Commonwealth of Massachusetts, 22 MLC 1039 (1995)(on appeal), the Commission considered whether the parties had reached a final agreement because the Union had failed to notify the Employer in a timely manner that ratification was a pre-requisite to the agreement. The Commission found that, because the Union notified the Employer before the parties reached agreement on all issues that the Union intended to conduct a ratification vote, the parties' subsequent agreement was a tentative agreement subject to ratification by the Union's membership.

The issue in AFSCME, Council 93, 22 MLC 1097 (1995) (on appeal) was whether the Union breached its duty of fair representation by failing to respond to a grievant's request for information concerning the status of his grievance, failing to discuss the merits of the grievance with the grievant, and failing to assist the grievant in processing his grievance. After assisting the grievant file a grievance, the Union received inquiries from the grievant's attorney about the status of his grievance, but negligently failed to respond to those inquiries. After the Employer denied the grievance, the Union decided not to continue processing that grievance because it believed that, once the grievant retained outside counsel, it was relieved of any obligation to continue representing the grievant.

The Commission determined that, absent evidence of unlawful motivation or bad faith, the Union's failure to continue processing the grievance was an honest error of judgment by a Union officer that does not rise to the level of a breach of the duty of fair representation. Further, the Commission concluded that although the Union was negligent in not responding to the requests concerning the status of the grievance, something more than mere negligence is needed to find a breach of the duty and the facts in the record did not support a finding that the Union's conduct exceeded the bounds of mere negligence.

In Massachusetts Bay Transportation Authority (MBTA), 22 MLC 1111 (1995)(issue raised on appeal from a Superior Court decision in a declaratory judgment action), the Commission considered whether a bargaining unit of all attorneys employed by the MBTA, excluding directors, executives, and confidential employees as those exclusions are defined in M.G.L. c. 161A, Section 19A, was an appropriate bargaining unit. The MBTA argued, inter alia, that M.G.L. c. 161A, Section 19(iv) gives it the inherent managerial right to classify employees as "executive" employees, thereby excluding them from exercising collective bargaining rights under M.G.L. c. 150A. However, the Commission concluded that, absent explicit statutory language restricting it from fashioning appropriate bargaining units for employees covered by Chapter 150A, it was appropriate for the Commission to consider whether particular employees should be excluded from bargaining because they are "executive."

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<sup>3</sup> This summary of decisions is not a comprehensive review of all Commission decisions that have issued during the past year.



Next, the Commission construed the term "executives" in Chapter 161A, Section 19A to be consistent with the NLRB's definition of managerial employees under the NLRA. Based on that definition, the Commission identified those attorneys in the MBTA's law department who met that definition of "executive." However, the Commission determined that a bargaining unit of attorneys employed by the MBTA is inappropriately underinclusive.

City of Melrose, 22 MLC 1209 (1995)(on appeal) raised the issue whether the City had violated the Law by repudiating an agreement with the Union representing its fire fighters that, when the number of pieces of apparatus was reduced to three, there would be no less than four fire fighters assigned to operate the ladder truck. In August 1992, the City and the Union had entered into an agreement settling a prohibited labor practice case, and that agreement provided that, if the City reduced its fire fighting apparatus to three pieces, the City would "maintain a complement of four fire fighters assigned to the ladder." Because the fire department's overtime account was inadequate to meet expenses for the remainder of the fiscal year, the chief issued an order in December 1992 effectively abrogating the August 1992 agreement. The City argued, *inter alia*, that the agreement was unenforceable because: 1) under M.G.L. c. 44, Section 31, it could not spend in excess of its appropriation; and 2) under Billerica v. International Association of Fire Fighters, Local 1495, 415 Mass. 692 (1993), the agreement was not enforceable in the second year because no funds had been appropriated for that purpose.

The Commission rejected the City's first argument because the record did not show that the City had insufficient monies in the relevant appropriations from which it could have paid the overtime costs incurred in complying with the agreement. Second, the Commission distinguished this case from Billerica on the ground that Billerica involved a three year collective bargaining agreement and the agreement at issue here was a settlement agreement resolving a pending prohibited labor practice that the City repudiated only four months after entering into it. Unlike Billerica, therefore, this was not a case of a public employer declining to honor a multi-year collective bargaining agreement in the second year of the agreement based on an insufficient appropriation.

The application of the Billerica decision to settlement agreements arose again in Boston School Committee, 22 MLC 1365 (1996)(on appeal). There, the parties had entered into a settlement agreement resulting from impact negotiations over a reduction in force in which the School Committee agreed to maintain a staff complement of 426 custodians. The School Committee had argued, *inter alia*, that, under Billerica, the agreement was unenforceable after the first year absent further action by the municipal employer to specifically fund it. However, the Commission rejected that argument because the School Committee repudiated the agreement only five months after it was finalized. Further, the Commission noted that, unlike Billerica, the case did not involve a multi-year successor collective bargaining agreement but an agreement in settlement of impact bargaining issues.

In Town of Wenham, 22 MLC 1237 (1995), the issue before the Commission was whether a unit of call fire fighters was appropriate. The Town had thirty-one call fire fighters appointed

annually who respond when a call comes in on their beepers. They are not required to respond to a specific number of calls, and they are not required to have their beepers on at all times. The record reflected that the number of responses by individual call fire fighters during 1994 ranged from 40 out of 427 total responses to 322 out of 427 total responses. The Commission concluded that there was sufficient continuity of employment and regularity of work to justify a unit of the Town's call fire fighters. However, the Commission noted that there were individual call fire fighters who worked only sporadically and did not demonstrate a substantial and continuous relationship with the Town. Therefore, relying on analogous kinds of employment, like substitute teachers, the Commission determined that only those call fire fighters who responded to at least thirty-three percent (33%) of all alarms had a sufficient continuity of employment to entitle them to collective bargaining rights.

City of Everett, 22 MLC 1303 (1995)(on appeal) raised the issue whether the City was mandated to implement an increase in employee HMO premium contribution rates pursuant to Chapter 653 of the Acts of 1989 or whether an exception to that statute was triggered because there was collective bargaining agreement between the City and the Union was in effect establishing the premium contribution rate at the time the City implemented an increase in HMO premiums. The duration clause of applicable contract provided that the agreement would "remain in full force and effect until midnight, June 30, 1991 and shall continue in effect thereafter until terminated by either party by written notice of not less than 30 days to the other party." Based on that language, the Commission found that the agreement did not expire on June 30, 1991, but continued in effect pursuant to the duration clause. Further, the Commission noted that there was no notice that either party had terminated the agreement by written notice. Therefore, the agreement was in effect at the time the City implemented the increase in HMO premium contribution rates, and the City violated Sections 10(a)(5) and (1) by implementing that change without bargaining with the Union.

In Commonwealth of Massachusetts, 22 MLC 1459 (1996), the Commission considered whether the Commonwealth failed to bargain in good faith by unilaterally implementing a catastrophic illness leave bank without giving the Union prior notice or an opportunity to bargain. Although the Commonwealth had argued that the program did not constitute a change in working conditions because it was voluntary, the Commission disagreed. The Commission concluded that the program offered employees an economic benefits similar to other voluntary benefits, like health insurance. Therefore, it was a mandatory subject of bargaining.

A central issue in Massachusetts State Lottery Commission, 22 MLC 1519 (1996) was whether the Union representing the Lottery's employees violated Sections 10(b)(1) and (2) of the Law by criticizing bargaining unit members who voluntarily gave testimony at an arbitration hearing favorable to the Lottery and by repudiating a contract provision prohibiting discrimination against bargaining unit members for union activity. First, the Commission concluded that, because the Union's conduct did not interfere with any specific rights the Lottery had under the Law, the Union did not violate Section 10(b)(1). However, the Commission did find that the Union failed to bargain in good faith with the Lottery in violation of Section 10(b)(2) of the Law when it



distributed written criticism of the employees who testified on the Lottery's behalf. The Commission reasoned that the parties' negotiated grievance-arbitration procedures would be effectively nullified if the Union were permitted to retaliate against an employee who gave adverse testimony at an arbitration hearing.

In Commonwealth of Massachusetts, 22 MLC 1569 (1996), the Commission ruled on objections to elections that the Commission had conducted in statewide bargaining units 1 and 6. The central issue was whether the National Association of Government Employees (NAGE)m, the incumbent union, had interfered with the conduct of those elections, by making misrepresentations of fact during a televised broadcast during the campaign, by making misrepresentations on a videotape it sent to voters shortly before the Commission mailed out ballots, and by re-publishing those misrepresentations after the Commission had mailed the ballots. The alleged misrepresentation involved statements to the effect that NAGE had guarantees from the Commonwealth concerning certain pay raises, including retroactive pay raises.

Relying on established precedent that elections will only be set aside because of misrepresentations if the timing and nature of the statements preclude an effective response, the Commission dismissed the objects. It reasoned that because the Massachusetts Organization of State Engineers and Scientists (MOSES), the petitioning union that had filed the objections, had responded to NAGE's representations on at least three separate occasions, the information available to the voters was sufficient for them to weigh the campaign propaganda and to make a reasoned choice of which union they wished to represent them.

In Town of Lexington, 22 MLC 1676 (1996), the Commission considered once again whether an employer had violated Sections 10(a)(1) and (5) of the Law by implementing a no-smoking policy without bargaining with the union. The facts revealed that the Town's police chief had unilaterally implemented a ban on smoking in police cruisers. Relying on its decision in Abington School Committee, 21 MLC 1630 (1995), the Commission observed that employees have an interest in bargaining about smoking policies that restrict their ability to smoke in the workplace. However, the Commission also recognized that an employer may have an overriding managerial interest that is central to its mission as a governmental entity. Here, the Town had submitted general evidence concerning some of the potential health hazards of secondhand smoke. However, the Commission did not find that that evidence was definitive enough to show that smoking in police vehicles posed a direct public health hazard. Therefore, on the record before it, the Commission held that the ban on smoking in police cruisers was a mandatory subject of bargaining and that the Town violated the Law by not bargaining with the Union prior to implementing that smoking ban.

In Andover School Committee, 22 MLC 1721 (1996) and City of Somerville, 23 MLC 11 (1996)(on appeal), the Commission considered, *inter alia*, whether the employers in those cases violated Sections 10(a)(5) and (1) of the Law by failing to recall laid off employees in retaliation for their concerted, protected activity. The central inquiry in each case was whether the employers had

any obligation to recall the employees. In City of Somerville, the Commission found that the City had eliminated the position from which it laid off the charging party. Therefore, because there was no position to which the charging party could be recalled, the Commission concluded that the City did not unlawfully discriminate against him by not recalling him. Similarly, in Andover School Committee, the Commission found that the School Committee did not discriminate by failing to recall a teacher it had laid off because there was no evidence that she had applied for an openings and there was no evidence that the School Committee had an affirmative obligation to contact employees it had laid off about openings that became available during their recall period.

## SELECTED LITIGATION

*JULY 1995-JUNE 1996*

### Decisions Issued:

1. Edwards v. Labor Relations Commission, 39 Mass. App. Ct. 1123 (1996). The Appeals Court summarily affirmed a pre-complaint dismissal of a charge alleging that a union breached its duty of fair representation by failing to represent the charging party before the Civil Service Commission.
2. School Committee of Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327 (1996). The Appeals Court affirmed a decision of the Commission concluding that the School Committee had violated M.G.L. c. 150E, Sections 10(a)(1) and (3) by laying off thirty-nine temporary and provisional custodians in retaliation for filing a representation petition and seeking to be included in an existing bargaining unit of custodians employed by the School Committee.
3. Massachusetts Bay Transportation Authority v. Labor Relations Commission, Suffolk Sup. Ct. C.A. No. 94-6777B (April 5, 1996)(on appeal, A.C. No. 96-P-988). A Superior Court judge issued a declaratory judgment that the Commission does not have jurisdiction to determine whether employees on the MBTA's executive payroll are excluded from collective bargaining pursuant to M.G.L. c. 161A, Section 19A.
4. Suffolk County House of Correction v. Labor Relations Commission, 40 Mass. App. Ct. 1123 (1996). The Appeals Court summarily affirmed a Commission decision finding that the employer unilaterally changed shift schedules and eliminated roll call.
5. Ryan v. Labor Relations Commission, 40 Mass. App. Ct. 1120 (1996). The Appeals Court summarily affirmed a pre-complaint dismissal of breach of duty of fair representation charge.
6. Switzer v. Labor Relations Commission, 40 Mass. App. Ct. 1121 (1996). The Appeals Court summarily affirmed a pre-complaint dismissal finding that the City of Somerville did not terminate the charging party or fail to recall him in retaliation for engaging in concerted protected activity.

### Pending Cases

1. City of Lynn v. Labor Relations Commission, A.C. No. 93-P-810. An appeal from a Commission decision finding that the involuntary retirement process implicates a bargaining obligation and that the City unilaterally altered its involuntary retirement practice. The Appeals Court held oral argument on January 17, 1995.



2. Town of Falmouth v. Labor Relations Commission, A.C. No. 94-P-2113. An appeal from Commission decision finding that Town had repudiated an agreement concerning outside details. The Town had entered conflicting agreements with two bargaining units, but the obligation to implement the arbitrator's award for one union is not a defense against other union's repudiation charge. The Appeals Court held oral argument on February 20, 1996.
3. Massachusetts Correction Officers Federated Union v. Labor Relations Commission, SJC No. 07011. An appeal from a Commission decision reversing an ALJ and finding that Commonwealth did not breach an employee's Weingarten rights when it declined to permit a Union representative to question an employee during an investigatory interview. The Supreme Judicial Court took direct appellate review of this case sua sponte and heard oral argument on April 3, 1996.
4. Salem Teachers Union v. Labor Relations Commission, A.C. No. 95-P-637. An appeal of several aspects of Superior Court strike litigation, including decision to allow School Committee's intervention, contempt trial procedure and amount of imposed fine. The Appeals Court heard argument on September 24, 1996.
5. Leonard v. Labor Relations Commission, A.C. No. 95-P-1517. An appeal from a Commission decision finding that the Town of West Springfield did not violate Section 10(a)(1) of the Law by 1) notifying a agency service fee payer that she could be discharged for failing to pay dues or an agency fee; and 2) failing to provide her with information about the fee the union demanded that she pay. Further, the Commission's decision concluded that the Town did not constructively discharge her in violation of Section 10(a)(3) of the Law by demanding that she pay an improper agency fee. The parties completed briefing in January 1996.
6. Teamsters, Local 59 v. Labor Relations Commission, A.C. No. 95-P-1852. An appeal from a Commission decision concluding that the Town of Chatham had not violated Section 10(a)(5) and (1) of the Law by failing to pay longevity and step increases after the parties collective bargaining agreement expired because there was insufficient evidence in the record about the practice between the parties. The Appeals Court heard oral argument on November 13, 1996.
7. Goncalves v. Labor Relations Commission, A.C. No. 96-P-591. An appeal from a Commission decision finding that a union did not breach its duty of fair representation by failing to assist an employee process a grievance because it mistakenly believed its duty to him was extinguished when he hired private counsel. The parties completed briefing in June 1996.
8. Commonwealth of Massachusetts v. Labor Relations Commission, A.C. No. 96-P-390. An appeal from a Commission decision concluding that the Commonwealth had violated Sections 10(a)(5) and (1) of the Law by refusing to provide the union with an incident report and witness reports concerning an allegation of sexual harassment. The parties completed briefing in August 1996.



9. Wilson v. Labor Relations Commission, 95-P-193. An appeal from a pre-complaint dismissal of a charge alleging a breach of the duty of fair representation. The parties completed briefing in September 1996.

10. Cross v. Labor Relations Commission, A.C. 96-P-715. An appeal of a pre-complaint dismissal. The Commission filed a Motion for Summary Affirmance under Appeals Court Rule 1:28 on July 5, 1996.

11. Commonwealth of Massachusetts, A.C. 96-P-1081. An appeal of a final Commission decision concluding that the Commonwealth of Massachusetts unilaterally changed the criteria for granting leave and unilaterally eliminated pre-scheduled overtime at MCI Plymouth. The parties completed briefing in October 1996.

#### Cases Awaiting Briefing

1. SEIU, Local 254 v. Labor Relations Commission, 96-P-1815, appeal of a final Commission decision.

2. Lynn Branch of the Massachusetts Police Association v. Labor Relations Commission, 96-P-1619, appeal of a final Commission decision.

3. City of Everett v. Labor Relations Commission, A.C. 96-P-1649, appeal of a final Commission decision.

4. City of Melrose, A.C. 96-P-0961, appeal of a final Commission decision.

5. I.B.C.O v. Labor Relations Commission, A.C. 96-P-1265, an appeal of a Commission decision dismissing an appeal from an administrative law judge's decision as untimely.

6. Boston School Committee v. Labor Relations Commission, A.C. 96-P-1579, an appeal from a final Commission decision.

7. Riley v. Labor Relations Commission, A.C. 96-P-1707, an appeal from a pre-complaint dismissal.

8. AFSCME v. Labor Relations Commission, A.C. 96-P-1287, an appeal from a final Commission decision.

## COMMISSIONERS

### **Robert C. Dumont, Chair**

Robert C. Dumont was appointed Commissioner, and designated Chair of the Labor Relations Commission in September of 1995, having previously served the Commonwealth as Personnel Administrator from December 1991. His career which spans close to 40 years, has focused on both corporate human resource management and employment consulting in private sector with the New England Life from 1957 to 1980, serving as Vice President of Personnel & Equal Opportunity from 1975 through 1980 and as a Founder and Principal of an employment consulting business from 1981 to 1991. In addition to his current Government service, he was Director of the Office of State Service for Governor Francis W. Sargent in 1973 & 1974 and has been appointed to various committees at the Federal, State and Local level as well as elected Selectman in the Town of Southborough from 1968-1974. He is a graduate of Dartmouth College in 1956 receiving an A.B. in Government.

### **Commissioner William J. Dalton**

William J. Dalton, Esq. was appointed Commissioner of the Labor Relations Commission in 1992 and served as chairperson from 1993 to 1995. Previously, his public service has been as town moderator, selectmen, chairperson of selectmen, and member of the Planning Board in Andover. He is an adjunct professor of law at Massachusetts School of Law and will publish a book, "Practical Public Sector Labor Relations" (Donahue Institute) in January, 1997. In addition to practicing law for almost thirty years, Commissioner Dalton has owned several businesses and was a newspaper columnist for the Eagle-Tribune, which published a collection of his columns in the book "Local Touch" (1986). He has a degree in economics from the Whittemore School at the University of New Hampshire, a Masters in Public Administration from the Kennedy School at Harvard, and an LLB from Boston University, where he was a member of the law review.

### **Commissioner Claudia T. Centomini**

Claudia T. Centomini, Esq. was appointed Commissioner of the Labor Relations Commission in 1993. Previously, she served as General Counsel to the Department of Labor and Industries from 1991 to 1993 and from 1989-1991 was legal counsel to the House Minority Leadership Office in the Commonwealth. She has been a panelist for MCLE and MBA seminars on such topics as public construction bidding laws, Massachusetts wage and hour laws and the Massachusetts personnel records statute. She is a graduate of the University of Michigan and Suffolk University Law School.

## COMMISSION STAFF

**Susan L. Atwater**, Esq., has been an **Administrative Law Judge** at the Massachusetts Labor Relations Commission since 1988. She holds a B.A. degree from Wheaton College, Wheaton Ill.; and a J.D. degree from Suffolk University Law School, Boston, MA; Work Experience: Associate, Law Firm of Murphy, Hesse, Toomey & Lehan, Quincy, MA.

**Stephanie B. Carey**, Esq., has been an **Administrative Law Judge** at the Massachusetts Labor Relations Commission since 1995. She holds a B.S. degree from Howard University, Washington, D.C.; M.Ed. degree from University of Toledo, Toledo, Ohio; and a J.D. degree from Northeastern University School of Law; Work Experience: Law Clerk to the Justices--Commonwealth of Massachusetts Trial Court, Superior Court Department; Deputy Chief Law Clerk--Commonwealth of Massachusetts Trial Court, Superior Court Department.

**John B. Cochran**, Esq., has been the **Chief Counsel** of the Massachusetts Labor Relations Commission since 1982. Following his graduation from Suffolk University Law School in 1978, Mr. Cochran was a law clerk to the judges of the Connecticut Superior Court and worked as an associate with a national labor and employment law firm. He has been a member of the adjunct faculty of Boston University School of Law since 1983, teaches Labor Law at Suffolk University Law School, and has taught Labor Law at Boston College Law School. Mr. Cochran has served as a consultant to the Florida Public Employees Relations Commission and the Virgin Islands Public Employee Relations Board. He is the immediate past president of the Association of Labor Relations Agencies, an organization of all labor agencies in the United States and Canada, and has been a member of the Labor and Employment Law Section of the Massachusetts Bar Association.

**Diane M. Drapeau**, Esq. has been an **Administrative Law Judge** at the Massachusetts Labor Relations Commission since 1978. She holds B.A. and M.A. degrees from Duquesne University; and a J.D. degree from Suffolk Law School; member of Massachusetts Bar since 1978; Chair, Arbitration and Dispute Resolution Committee, MBA Labor & Employment Section (1993-1994); Member of MBA Labor & Employment Section Council (1994-1995); Vice Chair, MBA Labor & Employment Section Council (1995-1996); Chair, MBA Labor & Employment Section Council (1996-1997); Member of MBA Board of Delegates (1996-1997).

**Kimberly Eustace** has been an **Administrative Assistant** for the Massachusetts Labor Relations Commission since 1987. Mrs. Eustace is responsible for the docketing of all cases, types notices, decisions and court briefs, tabulates statistics and processes all internal and external records handled by the Commission.

**Philip J. Holmes**, Esq., has been **Deputy Chief Counsel** at the Massachusetts Labor Relations Commission since 1996. He holds a B.A. degree from Dartmouth College in 1983 and a J.D. degree from Cornell Law School in 1986. He was an associate at Mudge Rose Guthrie Alexander & Ferdon in New York City from 1986 until 1988 and assistant district attorney at the Kings



County District Attorney's Office in Brooklyn, New York from 1989 until 1991. From 1991 until 1996, he was an assistant attorney general at the Massachusetts Attorney General's Office. Since June 1996, he has been the deputy general counsel at the Massachusetts Labor Relations Commission. He is a member of the Massachusetts and New York Bars since 1987 and the Washington, D.C. Bar since 1988.

**Winnie Leung** has been a **Business Manager** at the Massachusetts Labor Relations Commission since 1987. Ms. Leung is responsible for the processing of all expenses for the Commission.

**John J. Mark**, has been the **Commission Conciliator** at the Massachusetts Labor Relations Commission since September 1996. Mr. Mark was a mediator with the Massachusetts Board of Conciliation and Arbitration for 19 years. He holds A.A., A.B. and A.M. degrees from Boston College and Boston College Graduate School and B.S., A.A. and A.B.D. degrees from Providence College.

**Robert McCormack**, Esq., has been an **Administrative Law Judge** at the Massachusetts Labor Relations Commission since 1972. He hold a degree from Boston University, and a J.D. degree from B.U. Law School; Captain USAF, Strategic Air Command; Member of Mass. Bar since 1957.

**Julia McNamara** has been an **Administrative Assistant** at the Massachusetts Labor Relations Commission since 1995. Mrs. McNamara is responsible for the docketing of all cases, types notices, decisions and court briefs, tabulates statistics and processes all internal and external records handled by the Commission.

**Ann T. Moriarty**, Esq., has been an **Administrative Law Judge** at the Massachusetts Labor Relations Commission since 1992. She hold a B.A. degree, magna cum laude, from Westfield State College; M.S. degree from the Labor Relations and Research Center, University of Massachusetts, Amherst, MA; M.S. degree from Simmons College; and a J.D. degree, cum laude, from Suffolk University Law School; Assistant Executive Secretary Labor Relations Commission, 1974-1977; Executive Secretary, 1977-1992;

**Carmel Nicholson** has been the **Administrative Service Coordinator** of the Massachusetts Labor Relations Commission since 1985. Mrs. Nicholson is responsible for all payroll and personnel matters.

**Marjorie H. O'Reilly**, Esq., has been an **Administrative Law Judge** at the Massachusetts Labor Relations Commission since 1996. She holds a J.D. degree from Boston College Law School; Ed.M., from Harvard University; and a B.S. degree from Simmons College; Previous experience: Associate, Palmer & Dodge, LLP. Publications: Guardianship in Massachusetts: From Idiocy to Incompetency - Has the Law Changed or Just the Words?, The Massachusetts Family Law Journal, Sept. 1994, at 54. Professional Activities - Steering Committee, Young Lawyers Section of the

Boston Bar Association; Focus Committee, Massachusetts Black Women Attorneys; Board of Directors, Guardianship Reform, Advocacy, Counseling and Education, Inc. (G.R.A.C.E.).

**Mark Preble**, Esq., has been an **Administrative Law Judge** at the Massachusetts Labor Relations Commission since 1996, having been a Commission attorney since 1994. He holds a B.A. degree from the University of Massachusetts at Boston; J.D. degree, cum laude, from Suffolk University Law School.

**Shirley DeMarco Siciliano** has been **Collective Bargaining Specialist** at the Massachusetts Labor Relations Commission since 1973. Ms. Siciliano has been responsible for conducting on-site and mail ballots representation elections.

**Lisa Van Pelt**, Esq., has been **Counsel** at the Massachusetts Labor Relations Commission since 1995. She holds a B.A. degree from Smith College and J.D. degree from Boston College Law School. She has been a member of Massachusetts Bar since 1994 and a member of the Labor and Employment Section of the Massachusetts Bar Association since 1995.

**Veronica Caballero Viveiros**, Esq., has been **Counsel** at the Massachusetts Labor Relations Commission since 1995. She holds a B.A. degree from Boston College and a J.D. degree from Boston College Law School. She has been a member of the Massachusetts Bar since 1995; member of Massachusetts Bar Association.

**Mike Wallace**, has been **Executive Secretary** of the Massachusetts Labor Relations Commission since April 1996. Following his graduation from Suffolk University's Master's program in Public Administration, Mr. Wallace was Chief Financial Officer for Secretary of Labor Christine E. Morris in the Executive Office of Labor since August 1991. For his work in the Executive Office, he received the 1995 Manuel Carballo Governor's Award for Excellence in Public Service. Mr. Wallace has a degree in political science from Bridgewater State College. He has also attended the Commonwealth's Program for Senior Executives at the Kennedy School of Government at Harvard University.







